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1 A. I thought it was very simple. I wanted to teach more
2 evolution.
3 Q. When you say you wanted to teach more evolution, did you
4 want to critically analyze evolution?
5 A. Yes.
6 Q. Was that going on already in the school district?
7 A. Yes. It was a tenth grade standard.
8 Q. And we're going to come back to these academic content
9 standards as to when exactly they became effective. But in
10 2003 when you made your proposal to the Board of Education,
11 did you have knowledge of the tenth grade academic content
12 standard that permitted tenth-graders to critically analyze
13 evolution?
14 A. Yes. It was just coming through at that time.
15 Q. And was it your intent with the proposal to the school
16 board to simply go ahead and take the tenth grade standard
17 that was in existence and permit it to be taught at the
18 eighth grade level?
19 MR. MILLSTONE: Objection to the leading nature of
20 the question.
21 MR. HAMILTON: I'm trying to get clarity as to his
22 intent. There's been all kinds of discussion about his
23 intent. We're just trying to get clarity.
24 MR. MILLSTONE: You can get clarity, but it's not
25 up to you to testify as to what he's doing.

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1 HEARING OFFICER: If you could repeat the question.
2 (Question read.)
3 HEARING OFFICER: Overruled. You can answer.
4 A. I thought I've already answered that. Yes. I've
5 already stated that, yes, that's what I was after, the tenth
6 grade standard and bring it down to the eighth grade
7 standard.
8 Q. John, I'm going to hand you what's been marked Employee
9 Exhibit No. 5. Would you take a look at that document. This
10 is the proposal that you made back in 2003 to the Board of
11 Education. Correct?
12 A. That is correct.
13 Q. Did you have any purpose or intent to get the school
14 board to let you teach religion in the classroom?
15 A. No.
16 Q. Did you have any purpose or intent to get the school
17 board to let you talk about or teach creationism in the
18 classroom?
19 A. No.
20 Q. Did you have any intent or purpose to have the school
21 board let you talk or teach about intelligent design?
22 A. No.
23 Q. It actually states right here in this proposal that this
24 teaching being conducted -- I'm looking at the fourth line
25 down -- that the teaching "be conducted and taught

1 objectively and without religious, naturalistic, or
2 philosophic bias or assumption." True?
3 A. That is correct.
4 Q. And is that what you were trying to do?
5 A. Yes.
6 Q. Now, there's been some discussion about why you included
7 materials from the Intelligent Design Network. Tell us why
8 materials were included from the Intelligent Design Network
9 in this proposal.
10 A. At that time, I was just searching through a lot of
11 different things on the Internet and just gathering
12 information. I thought it could be helpful to someone who is
13 reading this.
14 Q. And, in fact, on the second page of Employee Exhibit
15 No. 5, Teaching Darwinian Evolution Objectively --
16 A. Where are you at?
17 Q. I'm at the third star under "what does the law say." Do
18 you see that?
19 A. Okay.
20 Q. It states that "the Ohio State Board of Education voted
21 18-0 to adopt the new Science Standards on December 10th,
22 2002, which states for its Grade 10th indicator 23, 'Describe
23 how scientists continue to investigate and critically analyze
24 aspects of evolutionary theory.'" Do you see that?
25 A. Yes, sir.

1 Q. Is that what you were trying to do with the proposal?
2 A. Yes, the tenth grade standard.
3 Q. Now, in this Employee Exhibit No. 5, is that you
4 creating the language or did you cut and paste the language?
5 A. I did some cutting and pasting.
6 Q. And you cut and pasted from many different places?
7 A. Yes.
8 Q. I see here that it looks like on the second page of
9 Employee Exhibit No. 5, the next to last paragraph,
10 www.sciohio.org is one of the places that you gained
11 information. Correct?
12 A. That is correct.
13 Q. And, of course, you were gaining information from the No
14 Child Left Behind of 2001?
15 A. Yes, I remember doing some research on Santorum, the
16 senator from Pennsylvania. I recall that name.
17 Q. Did you quote some material from the *Plain Dealer* in
18 this particular document?
19 A. Yes.
20 Q. Did you actually quote there under the fourth star on
21 page 2 where it says No. 4 "to form and express opinions on
22 controversial issues," and then in parentheses it says "See
23 Program 2240," page 1 of 1?
24 A. I do.
25 Q. Are you referring to the Mount Vernon city school

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1 system's Policy 2240 as it relates to controversial issues?

2 A. Yes.

3 Q. So this entire document didn't come from the Intelligent
4 Design Network, did it?

5 A. No.

6 Q. Now, at this particular time, this was after you and
7 Mr. Kuntz had had a discussion related to your evaluation on
8 January 21, 2003. Is that right?

9 A. Yes.

10 Q. And after that discussion, many things started to take
11 place, but as it relates to this proposal, this proposal
12 began to form after January 21, 2003, or before?

13 A. That would be in that time frame or it would be after.

14 Q. John, I hand you what's been marked Employee Exhibit No.
15 120. Take a look at it and tell me when you're done.

16 A. Okay.

17 Q. John, referencing back to Employee Exhibit No. 5, that
18 would be your proposal to the board -- the very bottom of the
19 page, do you reference this language: "The policy" --
20 referring to the policy that you're proposing at the time --
21 "is nearly identical to the provisions of HB 481" --

22 That's House Bill 481. Correct?

23 A. That's correct.

24 Q. -- "a proposal pending in the Ohio House of
25 Representatives as of July 27, 2002." Correct?

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1 A. That's correct.

2 Q. Employee Exhibit No. 120, is this the, as you understand
3 it, then pending as of July 27th, 2002, House Bill that
4 proposed to objectively teach origin science?

5 A. Yes.

6 Q. When you were doing this research back in 2003, did you
7 examine House Bill 481 back then?

8 A. Yes.

9 Q. Now, take a look at the first page of Employee Exhibit
10 No. 120. Under "Implementing Provisions," it states, "The
11 bill seeks to further its stated intent through three
12 operative provisions. These provision require schools to,"
13 and then it's got three different provisions. Right?

14 A. Yes.

15 Q. Is one of them to encourage teaching origin science
16 objectively and without religious, naturalistic, or
17 philosophic bias or assumption?

18 A. Yes.

19 Q. And would the second operative provision be to require
20 appropriate disclosure and explanation of any material
21 assumption that is used in explaining origins?

22 A. Yes.

23 Q. And, then, of course, the final one says, "Encourage the
24 development of curriculum that will help students think
25 critically about origins science and understand the full

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1 range of scientific views that exist regarding the origins of
2 life and why origins science may generate controversy."

3 A. Yes.

4 Q. Is that what you were trying to do with your proposal in
5 2003?

6 A. Yes.

7 Q. Would you agree that some people had a misunderstanding
8 of what you were trying to propose in 2003?

9 A. Yes, there was.

10 Q. How did you come across an understanding that some
11 people were misunderstanding what you were proposing?

12 A. When I went in to talk to Mr. Kuntz, the principal at
13 the time, I was asking for his suggestions on what to do. He
14 suggested going to the science curriculum committee,
15 approximately 15, 20 teachers from everything from elementary
16 to high school. I took the proposal in there. I presented
17 it as is. Left the room.

18 And I found out the following day -- two teachers that
19 were in that room approached me and said there was discussion
20 after I left, and they were discussing my religious beliefs.
21 And I thought that was very inappropriate.

22 Q. First of all, when you made the proposal in 2003, were
23 you trying to do anything secretive?

24 A. No, not at all.

25 Q. Did you provide them all the information that you had

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1 gathered during your presentation?

2 A. Yes.

3 Q. And when you learned about people talking about your
4 personal religious beliefs, what did you do?

5 A. I wrote those people a letter.

6 Q. When you say "those people," which people?

7 A. That would be Mr. Maley and Dr. Weston.

8 Q. I'm going to hand you what's been marked Employee
9 Exhibit No. 121. It's a letter dated April 23, 2003. Is
10 that letter familiar to you?

11 A. Yes, it is.

12 Q. How is it familiar to you?

13 A. Can I review it again?

14 Q. Yes.

15 A. Okay.

16 Q. Was this letter in your personnel file?

17 A. No, it was not.

18 Q. Should it have been?

19 A. Yes.

20 Q. And what strikes you about this letter?

21 A. Just the aspect of the bias that they have on me, that
22 they have -- I guess I'm going to use the word marked or
23 tagged me as some type of a religious whatever, fanatic or
24 whatever, and they were freely talking about it in this
25 meeting. And I never mentioned religion once in that

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1 meeting. There was no intention to teach my religion or
2 creationism or intelligent design. I was -- I'll use the
3 word I used earlier. I was appalled by their discussing
4 that. I couldn't believe it. Even today, it still amazes me
5 that it would come up. That's why this letter was given to
6 them.

7 Q. Now, the curriculum meeting, as stated in your letter,
8 it occurred on April 22nd, 2003. Correct?

9 A. Yes.

10 Q. You had a meeting exactly five years later in 2008 on
11 the same date. Right?

12 A. Yes.

13 Q. With Mr. White. Right?

14 A. Yes. Yes, I did. That's interesting.

15 Q. We'll come back to that one here in a moment. But the
16 second line, it says, "From the onset, it has been my desire
17 that all parties consider my proposal as proposed."

18 During the curriculum meeting, were you asked any
19 questions about your personal religious beliefs?

20 A. No.

21 Q. Did you make any statements about your personal
22 religious beliefs?

23 A. No.

24 Q. Now, the next line there, third line down, it says,
25 "Myself, and others who support this proposal." Who are

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1 those others?

2 A. There was a few other people. One that I can think of
3 that helped me write the proposal was involved in helping me
4 write it, in looking it over. And also my wife.

5 Q. Who was that other person?

6 A. Her name is Evy Oxenford.

7 Q. Evy, E-V-Y?

8 A. Yes.

9 Q. Oxenford.

10 A. Yeah, that's correct.

11 Q. Is she related to Bill Oxenford?

12 A. That would be a sister-in-law.

13 Q. Sister-in-law. But I understand there's been --

14 A. Was. Previous sister-in-law.

15 Q. No longer a sister-in-law. Correct?

16 A. That's correct.

17 Q. There in the fourth line, it says, "My proposal speaks
18 only to the request that our school system be allowed to
19 critically analyze the theory of evolution."

20 Has it been your position all along that that's all
21 you're trying to do?

22 A. Yes.

23 Q. You specifically state there, beginning the next line
24 down, it says it -- does it refer to your proposal?

25 A. Yes.

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1 Q. And in your proposal, it does not request the teaching
2 of creation or intelligent design?

3 A. Yes. Yeah.

4 Q. Has that always been your stance?

5 A. Yes.

6 Q. We'll come back to that in a little bit.

7 A. Next line down is where you tell Mr. Maley and Miss
8 Weston that "clearly, some people in this discussion have
9 allowed their own personal prejudices regarding my religious
10 convictions to cloud their judgment."

11 Is that the way you felt then?

12 A. Yes.

13 Q. Is that the way you feel now?

14 A. Yes.

15 Q. It says here, "It has been confirmed through no less
16 than two sources present at the meeting, that my personal
17 religious beliefs were brought into the discussion regarding
18 my proposal."

19 We've talked about this, and you've had difficulty
20 remembering who those sources were. Do you know who?

21 A. I'm pretty sure that it was two teachers.

22 Q. Who?

23 A. That would be Tammy Orsborn and Elle Button.

24 Q. You state in this letter that you're very disappointed.
25 What were you disappointed about?

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1 A. That they would be talking about my religious beliefs in
2 that setting.

3 Q. And then you go on to state that "Dr. Weston made no
4 attempts to stop this questionable dialogue." You weren't
5 there when this happened, right?

6 A. No, I wasn't.

7 Q. This is just something that people reported to you, and
8 you reported it to Dr. Weston and Mr. Maley. Correct?

9 A. That is correct.

10 Q. The next sentence says that "I understand that this
11 dialogue was finally stopped by a teacher." Who was that
12 teacher?

13 A. One of those two.

14 Q. One of which two?

15 A. Elle Button or Tammy Orsborn. I do believe it was Tammy
16 Orsborn.

17 Q. You go on to say you thought it was inappropriate to
18 allow discussion of your religious beliefs to take place.
19 Correct?

20 A. Yes.

21 Q. Now, when you sent this letter to them, did you expect
22 any follow-up from them?

23 A. No.

24 Q. In fact, you state that there in the letter. Right?

25 A. Yes.

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1 Q. You weren't -- were you mad at the time that they were
 2 discussing your religious beliefs?
 3 A. No. I thought this settled it right here.
 4 Q. Were you trying to file a complaint and have anybody
 5 investigated or follow up on it?
 6 A. No.
 7 Q. Now, would you agree or disagree that that particular
 8 proposal in 2003 became an issue of locally notoriety?
 9 A. Yes, it did.
 10 Q. It did become an --
 11 A. Yes, it did.
 12 Q. And people wrote in letters to the editor?
 13 A. Yes.
 14 Q. And did you keep some of those letters to the editor?
 15 A. Yes, I did.
 16 Q. Have you gone back and researched some of those letters
 17 to the editor?
 18 A. Yes, I did.
 19 Q. I'm handing you Employee Exhibit No. 122. Would you
 20 tell me what that is.
 21 A. It's a letter to the editor of the *Mount Vernon News*.
 22 Q. So this is the *Mount Vernon News* dated Wednesday, May
 23 7th, 2003. Correct?
 24 A. Yes.
 25 Q. And the letter to the editor -- I'm focusing on the

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1 first one -- it takes up the entire left column and proceeds
 2 over into the top of the right column. Correct?
 3 A. Yes.
 4 Q. What's your understanding of what this person Elaine
 5 Benedict is writing in to the editor?
 6 A. I do believe that it is dealing with the situation of
 7 talking about my religion.
 8 Q. Now, May 7th is obviously after your letter of April
 9 23rd. Right?
 10 A. Yes.
 11 Q. So people in the community at some point were talking
 12 about your religious perspective?
 13 A. Yes.
 14 Q. There in the first paragraph of the letter to the
 15 editor, the tenth line down, there's some language that is
 16 quoted. Do you see it?
 17 A. Yes.
 18 Q. And Miss Benedict states that your proposal was trying
 19 to, quote, present the scientific evidence regarding the
 20 origins of life and its diversity objectively and without
 21 religious, naturalistic, or philosophical bias or assumption,
 22 unquote. Did she accurately capture what you were trying to
 23 do?
 24 A. Yes, she did.
 25 Q. Now, the next full paragraph down, the next full

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1 paragraph down --
 2 A. Okay.
 3 Q. -- it states, "It has been reported to me that
 4 Mr. Freshwater's religious beliefs were discussed at the
 5 science curriculum committee." And then she goes on to say,
 6 "I would like to know why Dr. Lynda Weston ... allowed and
 7 continued to allow religion to be seen as part of the
 8 proposal?"
 9 Some people, would you agree, misunderstood your
 10 proposal?
 11 A. Yes.
 12 Q. Did you always try to be clear what your proposal was
 13 about?
 14 A. I thought it was clear.
 15 Q. Now, eventually, a board meeting did occur. Correct?
 16 A. Yes.
 17 Q. And we learned from Dave Daubenmire that he says he was
 18 at that board meeting. Did you see him at the board meeting?
 19 A. No.
 20 Q. Were you associating with him at the time when he was at
 21 that board meeting?
 22 A. No.
 23 Q. Was there an alternative proposal that was subsequently
 24 made after your proposal?
 25 A. Yes, there was.

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1 Q. Let me go back. Was your proposal eventually voted down
 2 by the board?
 3 A. Yes.
 4 Q. So, in other words, the board rejected your proposal as
 5 stated?
 6 A. Yes.
 7 Q. And then somebody came up with an alternative proposal?
 8 A. That is correct.
 9 Q. Who came up with this alternative proposal?
 10 A. School board member Dr. Benton.
 11 Q. What do you understand her proposal to have been that
 12 many years ago?
 13 A. Her proposal was a separation between macro and micro
 14 evolution, if I remember correctly.
 15 Q. Did she explain what macro and micro evolution were?
 16 A. I don't remember if she did or not. I would expect she
 17 did.
 18 Q. Your proposal and her proposal, as you understand, were
 19 they the same or different?
 20 A. They were different.
 21 Q. If you need me to refresh your opinion with any of those
 22 documents, you let me know. But let's see. Do you recall
 23 when the academic content standards were first issued by the
 24 State of Ohio?
 25 A. I could -- I know it's in the green book. I do believe